

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1105 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MAGANLAL K. PATEL

Appearance:

MS MAYA DESAI for MR MD PANDYA for Appellant
MR TV SHAH for Respondent No. 1
UNSERVED-EXPIRED (N) for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/09/98

ORAL JUDGEMENT

1. Respondent No.2, Purshottam Devraj, driver of the offending vehicle of the Corporation has expired. He was only driver and his heirs and legal representatives are not required to be brought on record. Name of respondent No.2 is ordered to be struck off from the record of this appeal. Office is directed to make necessary correction in the cause title of the appeal.

2. This appeal filed by the Gujarat State Road Transport Corporation, is directed against the judgment of Claims Tribunal (Main), Junagadh District, Junagadh, in M.A.C. Petition No.19 of 1983 decided on 1st August, 1984. Under this award, the claimant-respondent No.1 has been awarded Rs.46,250/- with proportionate costs and running interest at the rate of 6 % p.a. from the date of application to the date of payment from the S.T. Corporation for the injuries sustained by him in a motor vehicular accident caused by the S.T. bus.

3. The claimant-respondent No.1 was driving the motor-cycle from Shapur to Junagadh on his correct side of the road at a slow speed. The bus which was driven by the respondent No.2, since deceased, belonging to and own by the Corporation dashed with the motor-cycle of the claimant-respondent No.1 as a result of which he fell down and sustained injuries and he filed the claim application for compensation.

4. Under the impugned award, the Tribunal has apportioned contributory negligence of the claimant-respondent No.1 and the driver of the S.T. bus to the extent of 50 % each.

5. Only contention made by the learned counsel for the appellant in this appeal is that the Tribunal has committed serious illegality in holding the driver of the S.T. bus negligent to the extent of 50% in the accident. The accident has been caused solely on the negligence of the motorcycle driver i.e. the claimant-respondent No.1.

6. The counsel for the claimant-respondent No.1, on the other hand, has supported the award of the Tribunal.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. In this case before the Tribunal, the S.T. Corporation has not produced any evidence. The driver of the S.T. bus has also not been examined, which position has not been disputed by the counsel for the appellant. So before the Tribunal, there was no evidence from the side of the Corporation for this accident. The claimant-respondent No.1 has been examined at Ex.27 and he made a statement that he was driving his motor-cycle on the correct side of the road at moderate speed. It is true that the Tribunal has not accepted the version given out by the claimant-respondent No.1 100% but taking into consideration the fact that the right side of the S.T.

bus has hit the motor-cycle, the driver of S.T. bus has rightly been held to be contributory negligent to the extent of 50%. Learned counsel for the appellant is unable to explain the position how the front part of the bus struck the motorcyclist. That striking of the bus to the motorcyclist from the front part thereto has rightly been taken to be a suggestion of carelessness on the part of the driver of the S.T. bus. I do not find any illegality in the award and finding of fact which has been recorded on the question of contributory negligence of the motorcyclist and bus driver by the Tribunal, which calls for interference of this Court.

9. In the result, this appeal fails and the same is dismissed. Interim relief, if any, granted by this court stands vacated. No order as to costs.